No. 83-417

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1983

HUNG T. VU & ANTHIA VU,
Petitioners,

VS.

THE SINGER COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Did the United States District Court for the Northern District of California and the United States Court of Appeals for the Ninth Circuit correctly conclude that Respondent The Singer Company owed Petitioners no duty of care under controlling California law?

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BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit and the order of the United States District Court for the Northern District of California are identified in the Petition.

JURISDICTION

Respondent The Singer Company (Respondent) objects to Petitioners' jurisdictional statement. Review on certiorari under Rule 17 of this Court requires that an "important question of federal law" be presented. In the litigation

below, Petitioners asserted that the Job Corps' enabling statutes and regulations compelled Respondent to either keep corpsmembers locked up like caged animals, or dismiss them from the program when they did anything wrong. According to Petitioners, failure to do so resulted in civil tort liability for any off-center criminal activity of these under-privileged youths.*

It is, of course, a difficult and sensitive problem to balance the rights of individuals in rehabilitation programs and the goal of making those individuals into productive members of society, against the need of the public to be protected from crime.

There are two levels to that problem: first, what degree of discipline should be exercised by those responsible for such programs; and second, whether individuals injured by participants in rehabilitation programs should have a tort law remedy against the program operator, as well as the individual causing the injury. With respect to Job Corps, the first question is one of federal law. The degree of discipline for corpsmembers is defined in the applicable federal statutes and regulations. The second, however, is a question of state law. There is no express or implied private federal right of action attached to the Job Corps legislation, and Petitioners do not assert otherwise. Thus, even if Petitioners were correct that under federal statutes Respondent should have caged or dismissed the corpsmembers who injured them, that does not present an

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*Although petitioners have identified the allegedly relevant code section as 29 U.S.C. § 932, that section has been repealed and is recodified in 29 U.S.C. § 1700.

important question of federal law as required by Rule 17. As both lower courts concluded, Petitioners must turn to state substantive law to determine if Respondent owed *them* a duty of care, redressable in tort litigation.

State law governs substantive issues in a diversity suit, and the federal court is bound by that law as declared by the highest state court. *Olsen-Frankman Livestock, Etc. v. Citizens Nat.*, 605 F.2d 1082, 1083 n.1 (8th Cir. 1979); *Reid v. Volkswagen Of America, Inc.*, 575 F.2d 1175, 1176 (6th Cir. 1978); *Knapp v. North American Rockwell Corp.*, 506 F.2d 361, 364 (3d Cir. 1974), *cert. denied*, 421 U.S. 965 (1975); *Wirth v. Clark Equipment Company*, 457 F.2d 1262, 1264 (9th Cir.), *cert. denied*, 409 U.S. 876 (1972); *Aerosonic Corporation v. Trodyne Corporation*, 402 F.2d 223, 229 (5th Cir. 1968).

Thus, both the district court and the Court of Appeals were bound to follow the controlling state negligence law here, and that result does not change simply because a federal statute might be involved. *E.g., Brandes v. Burbank*, 613 F.2d 658, 661-667 (7th Cir. 1980); *Frank's Plastering Company v. Koenig*, 341 F.2d 257, 264 (8th Cir. 1965); *Karle v. National Fuel Gas Distribution Corp.*, 448 F.Supp. 753, 767 (W.D. Pa. 1978). Since only a question of state law has been presented, the Petition should be denied on jurisdictional grounds. *Henry v. Mississippi*, 379 U.S. 443, 446-447, 13 L.Ed.2d 408 (1965); *Herb v. Pitcairn*, 324 U.S. 117, 126, 89 L.Ed. 789 (1945).

Even if this Court were to conclude that a "federal issue" is presented in the Petition, that issue does not rise to the level of importance necessary to confer jurisdiction

here. The jurisdiction of this Court is confined to federal questions that reach beyond "the academic or the episodic," and the Court does not sit simply to resolve disputes between the litigants before it. *Rice v. Sioux City Cemetery*, 349 U.S. 70, 74, 99 L.Ed. 897 (1955).

Petitioners present no compelling reason for the immediate interpretation of the federal statutes and regulations that govern the Job Corps. As Petitioners' brief points out, the Job Corps was conceived in 1964 and in the intervening 20 years no federal case has had occasion to construe its enabling statutes and regulations in the context of tort litigation involving people living in the vicinity of Job Corps centers who are injured by criminal acts of off-duty corpsmembers. It is apparent therefore that there is no federal statute here in need of construction on an issue important to many litigants. To the contrary, it is only this unique case that would be impacted by a decision on the issue posed here, and the Petition should be denied on this basis as well.

Finally, the "federal issue" Petitioners present was framed for the first time (if at all) in their Petition. This case was removed to the federal district court, and as Petitioners admitted in their brief before the Ninth Circuit Court of Appeals, the basis of jurisdiction was diversity (28 U.S.C. § 1332). While the Job Corps' enabling statutes and regulations were raised in the courts below, Petitioners never argued that the statutes they cite created an implied federal right of action. Rather, Petitioners asserted that the statutes created a standard of conduct which gave rise to a duty of care under state law. Since the federal issue has been raised (if at all) for the first time in this Petition,

it should not be considered. *Tacon v. Arizona,* 410 U.S. 351, 352, 35 L.Ed.2d 346 (1973); *Lawn v. United States,* 355 U.S. 339, 362, n.16, 2 L.Ed.2d 321 (1958).

Dated: October 11, 1983.

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